No. 24-1202

IN THE

Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

GRINDR INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

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INTRODUCTION

The Brief in Opposition supports the need for review by this Court.

This case presents vital questions that this Court has been waiting to resolve: how far Section 230 extends, whether it shields a platform's own misconduct, and whether courts may skirt congressional efforts to hold platforms accountable for sex trafficking. This vicious cycle—of expansive claims of immunity, unchecked industry risk-taking, inconsistent judicial interpretation, and dismissed complaints—can only be resolved with clear guidance from this Court.

Grindr's strategy is to falsify the facts and issues in an attempt to make the case undesirable for review. It promotes a false narrative that Doe is suing Grindr for failing to ban him from using the product. As is clear in the Complaint, Doe's theories of liability focus squarely on Grindr's affirmative conduct and first-party content: marketing to minors; enrollment of minors as members; extraction of location data to offer children to adults (and vice versa) for sex; and the adult-child rapes that predictably occur. ER-166-196. Foreseeably, Grindr caused the quadruple rape of John Doe. Those allegations were preserved and advanced below.

Grindr volunteers for the first time that the algorithms behind the adult-child matches are Grindr's own first-party content yet denies that algorithm-related facts run throughout Doe's pleading and the lower decisions. Opp. 15. Whether Grindr's algorithms are Grindr's conduct or content, neither are entitled to Section 230 immunity.

Grindr's attempt to defend the Ninth Circuit's importing of atextual *mens rea* and causal requirements into federal sex-trafficking statutes highlights the stakes: the gutting of Congress's chosen protections for children and reinstatement of the very loophole Congress enacted FOSTA to close. Opp. 22-23.

Grindr's brief gets one thing correct: this Court has denied review in at least 28 Section 230 cases. Opp. 1. Grindr carries on its business as though this Court will never curtail this law that they interpret as licensing online platforms to run amok.

The urgency is acute, the record is clean, and there is a circuit conflict. Review is warranted.

ARGUMENT

I. Grindr Fails to Adequately Address Reasons that Support Review.

a. The Circuits Are Squarely Divided on Section 230's Scope.

Grindr falsely claims that there is no Section 230 circuit split. Opp. 7.

However, there is a national chasm in Section 230 jurisprudence relating to Doe's *actual* claims of product liability, negligence, and negligent misrepresentation. Pet. 18-29. The Fifth Circuit would have preserved Doe's claims because Grindr's own algorithmic recommendations are its own speech. *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024). Doe's case would likely be set for trial by

now in the Seventh Circuit, which rejects that Section 230 creates immunity in gross. *Doe v. GTE Corp.,* 347 F.3d 655, 660 (7th Cir. 2003).

To reach its false conclusion about circuit cohesion, Grindr must rewrite Doe's claims. And so Grindr does. It reframes this suit as one that attempts to hold Grindr liable for traditional publishing functions: "moderating who can post profiles," "publishing voluntarily shared user location information to other users," and "providing neutral tools that facilitate communication." Opp. i.

Grindr ignores the fact that publishing users' location information constitutes Grindr's *own* speech and Section 230 does not apply. Further, the *voluntariness* of Grindr's extraction and publishing of location data is a critical fact outside the record and runs counter to Doe's pleading. In a Rule 12(b)(6) motion, only Doe's facts matter. *Jewel v. Nat'l Sec. Agency*, 673 F.3d 902 (9th Cir. 2011).

Grindr tries to strip Doe's pleadings from this case as a desperate attempt to characterize the case as one where the circuits would be in harmony.

The Ninth Circuit's summary of Doe's claim is a stark contrast to Grindr's wishful version for publisher-based claims, and makes the disharmony among the circuits clear:

> "[T]he operative complaint on appeal, alleged the following six causes of action:
>
> (1) Defective design, as the App's geolocation function matched adults and children for

illegal sexual activity, and safer alternative designs were feasible,

(2) Defective manufacturing, as the App matched adults and children for illegal sexual activity,

(3) Defective warning, as the App did not adequately instruct users about known risks of child abuse,

(4) Negligence, as Grindr owed Doe a duty to avoid matching Doe with adult men who would rape him,

(5) Negligent misrepresentation, as Grindr negligently misrepresented that the App was designed to create a safe and secure environment for its users, and,

(6) Violation of the TVPRA, 18 U.S.C. Section 1595, as Grindr directly and knowingly participated in a sex trafficking venture, and knowingly benefitted financially from trafficking." App. A 5a.

Eventually, Grindr concedes that the Third and Fifth Circuits allow claims where liability flows from product design rather than user content. Opp. 9–10.

Until this Court intervenes, liability for wrongs committed by platforms like Grindr will turn not on the law, but on geography. That conflict warrants review.

b. The Ninth Circuit's Decision Is Wrong.

The Ninth Circuit's holding rests on an overbroad reading of "treat as a publisher." Opp. 19-22. But Doe's claims do not rest on the theory that Grindr should have removed particular user content or failed to ban him. He alleged that Grindr designed a defective product that (1) markets itself to minors, (2) represents itself as safe, (3) recruits minors, (4) harvests their location data, (5) algorithmically connects them to nearby adults for sex, and (6) causes their rape. ER-171 ¶28; ER-175 ¶49.

The Ninth Circuit only considered facts about "the harmful sharing of messages between users." App. A 7a. It determined that Grindr's duties start and stop in the virtual world. If Grindr only existed for virtual encounters, that might be supportable. But Grindr is not a mere chat app. Its only purpose is to pair people for real world sex. The Ninth Circuit ignored the facts that Grindr markets to children, mingles adults and children, and acts as a sex-matchmaker. It also ignored the host of Grindr's moderation activities – which are another source of liability. Ignoring these facts, the Panel then decided the claims only treated Grindr as a publisher.

Section 230 immunizes only when a claim would "treat" the defendant as a publisher or speaker of other parties' content. 47 U.S.C. §230(c)(1). That is not the case here.

Grindr ignores that the Ninth Circuit historically limited Section 230 to claims where the defendant is actually treated as a publisher. The courts have found no immunity for content not intended for publication, *Batzel*

v. Smith, 333 F.3d 1018, 1034 (9th Cir. 2003), encouraging or materially contributing to content illegality, *Fair Hous. Council of San Fernando Valley v. Roomates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008), promise-based claims, *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), failure to warn, *Doe v. Internet Brands*, 824 F.3d 846 (9th Cir. 2016) and *Beckman v. Match.com*, 668 Fed.Appx. 759 (9th Cir. 2016), consummating third-party transactions, *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019), "anti-competitive animus," *Enigma Software Grp. USA, LLC v. Malwarebytes*, Inc., 69 F.4th 665 (9th Cir. 2023), funding third-party content, *Gonzalez v. Google, LLC*, 2 F.4th 871 (9th Cir. 2021), negligent design, *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), discriminatory ad targeting, *Vargas v. Facebook*, 2023 WL 6784359 (9th Cir. Oct. 13, 2023), moderators' activities, *Quinteros v. Innogames*, 2024 WL 132241 (9th Cir. Jan. 8, 2024), first-party marketing representations, *Diep v. Apple*, 2024 WL 1299995 (9th Cir. Mar. 27, 2024) contract-based claims, *Calise v. Meta Platforms, Inc.*, 103 F.4th 732 (9th Cir. 2024), site disclosures, *Est. of Bride by and through Bride v. Yolo Techs., Inc.*, 112 F.4th 1168 (9th Cir. 2024).

This pattern of common-sense limits on immunity culminated in a decision last month where the Ninth Circuit preserved design-defect and negligence claims against Twitter in a case where traffickers coerced minors to produce child sexual abuse material (CSAM) and Twitter slow-walked its ameliorative response. *Doe v. Twitter*, 2025 WL 2178534 (9th Cir. Aug. 1, 2025). Likening the matter to *Lemmon*, where a speed filter encouraged reckless driving that resulted in foreseeable deaths of two teenagers, the Ninth Circuit found that Twitter "could

fulfill its purported duty to cure reporting infrastructure deficiencies without monitoring, removing, or in any way engaging with third-party content."

Similarly, in this case, Grindr could fulfill its duty by not soliciting minors to use its product, by not enrolling minors, by not matching minors indiscriminately with nearby adults for sex, and by not getting these minors raped.

c. The Ninth Circuit Misapplied FOSTA and the TVPRA.

Congress enacted FOSTA in 2018 to clarify that no immunity is available to platforms that knowingly commercialize the sexual exploitation of minors. See 47 U.S.C. §230(e)(5)(A). The Ninth Circuit's opinion nullifies that. App. A 10a-14a.

Section § 1591(a)(1) makes it unlawful to "knowingly . . . recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize, or solicit" a minor for sex trafficking. Grindr did that: it knowingly recruited minors and facilitated their abuse. Yet the Ninth Circuit layered on extra-textual *mens rea* requirements, demanding evidence beyond the statutory "knowingly." Pet. App. 13a. Even so, Doe adequately alleged that Grindr had actual knowledge by soliciting minors to the app, prior reports of sexual abuse, and academic journal reports about the statistically significant amount of underage sex it caused.

Section 1591(a)(2) imposes liability on those who "knowingly benefit . . . from participation in a venture" that traffics minors, if they "knew or should have known" of the

venture. Grindr benefits from minors' presence by selling subscriptions and harvesting data. But the Ninth Circuit demanded a direct revenue stream tied to Doe's abuse, rewriting "anything of value" into a narrow commercial nexus. App. A 13a.

The Ninth Circuit's defense of platforms that "turn a blind eye" to rampant child abuse on their platforms is antithetical to the judicial intent behind these laws—to ensure that platforms like Backpage—and now Grindr—could not profit from trafficking while hiding behind Section 230. App. A 12a. By effectively reinstating immunity, the Ninth Circuit frustrates Congress's mandate, endangering children.

d. The Stakes Are Urgent and National in Scope.

Grindr fails to even deny that the question of platform liability is recurring, urgent, and important. Pet. 33. The statutory scheme—Section 230, FOSTA, the TVPRA—was meant to prevent harm to children. Courts' refusal to apply those protections is a choice that has left victims remediless.

Until this Court intervenes, platforms will continue to operate under conflicting rules of liability. More children will be exploited. Congress's reforms will remain nullified. The Court should grant certiorari to restore the statutes' intended balance.

II. Grindr Mischaracterizes the Case to Avoid Review.

a. This Case is an Optimal Vehicle for Clarifying Section 230's Scope.

Grindr suggests this case is a poor vehicle, asserting that Doe waived or invented theories. Opp. 1, 6. Incorrect. Doe's pleadings targeted Grindr's own conduct and algorithmic content: ER-179 ¶75 (defective age verification); ER-185 ¶107 (matching children to predatory adults); ER-193 ¶167; (launching children into in-person sex dates with adults, profiting from minors' exploitation). These allegations were squarely before the district court and Ninth Circuit. The issue of algorithmic matching and Grindr's publication of its own content has been squarely before the courts since day one with Grindr convincing the trial court to adopt *Dyroff*. App. B 22a, ER-161 ("But Grindr's match function relies on and publishes a user's profile and geolocation data, which is third-party content generated by the user. *See Dyroff,* 934 F.3d at 1098 (finding that an app's features, functions and algorithms that analyze user content and recommend connections 'are tools meant to facilitate the communication and content of others.')"). Grindr can't rewrite the history of this case simply because there is now a clear circuit split from *Anderson*.

Grindr's reliance on the Court's prior denials of certiorari in other Section 230 cases underscores the point. As Justice Thomas has repeatedly observed, those denials reflect the cases' flaws as vehicles for these questions, not satisfaction with the state of the law. See *Doe v. Snap*, 603 U.S. ___ (2024) (Thomas, J., dissenting). This case avoids

the pitfalls of prior petitions and squarely presents the core interpretive question.

Grindr's brief rests on an inaccurate reframing of the allegations: that every aspect of Doe's claims turn on "third-party content," while none of the claims implicate Grindr's own conduct in designing and operating its defective product. That framing corrupts the pleadings and this Court's jurisprudence.

For example, Grindr argues that Doe's claims seek to hold Grindr liable for failing to regulate or restrict third-party content, Opp. 4; that they cannot be distinguished from third-party content, Opp. 21; and that Grindr's choices about platform design and safety necessarily implicate Grindr's role as a publisher, Opp. 5.

But these arguments collapse the distinction between third-party content and Grindr's own conduct. The claims challenge Grindr's own choices in product design and safety architecture—not speech of others. Doe alleges that Grindr built and maintained an app that expressly promoted sexual encounters while simultaneously recruiting minors to join and providing them with frictionless access to those encounters. The platform's age-verification systems, access controls, and geolocation design are all infrastructures within Grindr's exclusive design and control. These elements are not third-party "content" under Section 230; they are product features that pre-exist any individual user's speech. If these are "content" at all, they are Grindr's own. Any third-party content is but a downstream effect of Grindr's own conduct in failing to design a safe product and marketing that product to minors and profiting from their use thereof.

Grindr's gravest misconduct is outside speech-based concerns altogether. Those pertain to Grindr's role in recruiting children and pimping them out for sex with adults.

Grindr audaciously asserts that Grindr's infrastructure—geolocation features and marketing—require Grindr to monitor or block third-party content. Opp. 27. Yet its privacy policy states Grindr itself publishes this information and members have no authority over it:

> You may choose to hide your Distance Information; however, the Grindr Services will continue to sort and display your profile based on your relative distance from other users. Accordingly, even if you choose to hide your Distance Information, others may nevertheless be able to determine your Location.[1]

Shockingly, Grindr even risks conflating "content" with the actual minors it fails to protect from abuse by collapsing the presence of a minor on its app with the contents of their profile. By Grindr's logic, all harms that happen to minors boil down to an editorial decision to not ban the individuals involved. But it is Grindr's own decisions to market to minors and allow them to use its app, surreptitiously or otherwise, enabling them to make such profiles in the first place.

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1. Grindr, *Privacy Policy and Cookie Policy*, https://old.grindr.com/privacy-policy/?lang=en-US (last visited Sept. 6, 2025).

b. The Pleadings and Record are Meticulous.

Grindr attempts to dupe the Court into believing Doe's Complaint is otherwise defective. This is a lie. Doe's Complaint is meticulously pleaded and no court has ruled otherwise.

Contrary to Grindr's assertion, courts in California regularly apply product liability law to online services and refuse to engage in the product-service distinction on a Rule 12(b)(6) motion. *See Neville v. Snap, Inc.,* No. 22STCV33500 (Sup. Ct. Cal., Los Angeles, Jan. 2, 2024*); In re Social Media Adolescent Addiction/ Personal Injury Products Liability Litigation,* 702 F.Supp.3d 809 (9th Cir. 2023); *Doe v. Twitter*, ––– F.4th ––– (9th Cir. 2025); *Uber Technologies, Inc. v. U.S. Judicial Panel on MDL,* 131 F.4th 661 (9th Cir. 2025).

The source of Grindr's duty does not derive from "a website" that failed to "protect users from other users' misconduct." Instead, the Complaint grounds negligence claims in the theories of misfeasance—Grindr increased the risk by "deliberately market[ing] its product to children" and launching him into real-world sex with nearby strangers and because "Grindr owes John Doe the duty to exercise reasonable care and to not aid in the rape of children." ER-188.

The Complaint adequately alleges negligent misrepresentations in that the Grindr App is marketed as "a safe and secure environment for its users." Grindr asserts any misrepresentations made by the company as to its product's safety are "puffery on which no reasonable

person would rely." Opp. 19, *citing Prager Univ. v. Google LLC*, 951 F.3d 991, 1000 (9th Cir. 2020). However, unlike the nonspecific commitments to vague ideals of free speech and open dialogue at issue in *Prager*, misrepresentations as to the safety of a consumer product are at the very core of negligent misrepresentation claims. *See Anunziato v. eMachines, Inc.*, 402 F.Supp.2d 1133 (C.D. Cal. 2005) (citing *Osborne v. Subaru of America, Inc.*, 198 Cal. App.3d 646, 660 (1988)) ("Sellers are permitted to 'puff' their products by stating opinions about the quality of the goods so long as they don't cross the line and make factual representations about important characteristics like a product's safety."). Companies collect data about their products' safety, and safety is not merely an ideological commitment but a matter of objective fact. *Id.* To hold otherwise would give companies *carte blanche* to mislead customers as to the safety of their products.

Doe's allegations of proximate cause are well-pleaded. Grindr markets its sex app to children. Doe was a child lured to Grindr by its marketing and false claims of safety. He could easily join because Grindr had no effective age restrictions. The complaint describes Grindr's extensive knowledge of children using its platform and being raped. (e.g. "[s]ince 2015, more than 100 men across the United States—including police officers, priests and teachers—have faced charges related to sexually assaulting minors or attempting sexual activity with youth they met on Grindr." ER-181). Grindr extracted Doe's location data to recommend him to adults for in-person sex. The first four individuals Doe met through Grindr each raped him over four consecutive days. ER-110.

CONCLUSION

For the above reasons, a writ of certiorari should be issued to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

DATED this 9th day of September 2025.

Respectfully submitted,

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